

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: CS/SB 1006

INTRODUCER: Finance and Tax Committee and Senators Fasano and Lynn

SUBJECT: Ad Valorem Assessments/Challenges

DATE: April 15, 2009 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|------------------|
| 1. | Molloy | Yeatman | CA | Favorable |
| 2. | Sumner | Maclure | JU | Favorable |
| 3. | Fournier | McKee | FT | Fav/CS |
| 4. | | | WPSC | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This committee substitute revises the burden of proof in a challenge to an assessment by providing that, in an administrative or judicial action in which an ad valorem assessment is challenged, the burden of proof is on the party who initiates the challenge, and the standard of proof is preponderance of the evidence.

The taxpayer can overcome the property appraiser's or value adjustment board's presumption of correctness by proving, by a preponderance of the evidence that:

- The assessed value does not represent the just value of the property after taking into account any applicable limits on annual increases in value'
- The assessed value does not represent classified use value or fractional value where appropriate, or
- The assessment is arbitrarily based on appraisal practices that are different from those applied to comparable property in the same county.

If the assumption of correctness is overcome, the value adjustment board or court must establish the assessment if there is enough evidence to do so. If not, the issue is remanded to the property appraiser with instructions of how to change the assessment. A challenge to the revised assessment is handled by the same procedures.

The committee substitute provides that a party is not required to exclude every reasonable hypothesis of a legal assessment, and the property appraiser's assessment does not have a presumption of correctness in administrative or judicial actions where a denial of an exemption or assessment classification is challenged. The taxpayer must prove entitlement to the exemption or classification by a preponderance of the evidence.

If enacted, this committee substitute will take effect upon becoming a law and will apply to the 2009 tax roll. The provisions of the committee substitute relating to "every reasonable hypothesis" and challenges to classification or exemption status are clarifying and remedial and apply to actions pending on or after the effective date of the act.

The Revenue Estimating Conference estimated the impact of a similar proposal on local government tax revenues to be (\$138.9 million) in FY 2009-2010, with a recurring impact of (\$613.8 million).

This committee substitute substantially amends section 194.301, Florida Statutes.

II. Present Situation:

Property Assessments at Just Value

Section 4, Art. VII, State Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Since 1965, the settled law in Florida has been that "just valuation" is synonymous with "fair market value," and is defined as what a willing buyer and willing seller would agree upon as a transaction for the property.¹

Section 193.011, F.S., provides the eight factors the property appraiser must use when arriving at just value:

- The present cash value of the property, which is what a willing buyer would pay a willing seller, exclusive of reasonable fees and costs of purchase, in an arm's length transaction.
- The highest and best use to which the property can be expected to be put in the immediate future (taking into consideration specified factors).
- The location of the property.
- The quantity or size of the property.
- The cost and the present replacement value of any improvements on the property.
- The condition of the property.
- The income from the property.
- The net proceeds of the sale of the property after deduction of reasonable fees and costs.

¹ *Walter v. Schuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

The method of valuation and the weight assigned to each of the eight factors is at the property appraiser's discretion. The assessment will not be disturbed on review so long as each factor has been lawfully considered and the assessed value is within the range of reasonable appraisals.²

Administrative and Judicial Review of Property Taxes

Chapter 194, Florida Statutes, provides several ways in which a taxpayer can challenge the assessment placed on his or her property, or denial of an exemption or classification. The taxpayer may:

- Request an informal conference with the property appraiser³
- Petition the value adjustment board,⁴ or
- Contest the assessment in circuit court.⁵

The property appraiser may appeal a decision of the value adjustment board to the circuit court. All circuit court proceedings are *de novo*, with the burden of proof upon the party initiating the action.⁶

Assessment's Presumption of Correctness

Section 194.301, F.S., provides that, in any administrative or judicial action brought by a taxpayer, the property appraiser's assessment is presumed correct. If the taxpayer can show by a preponderance of the evidence that the property appraiser has failed to properly consider the criteria in s. 193.011, F.S., or that the property appraiser's assessment is arbitrarily based on appraisal practices different from those generally applied to similar properties within the same class and county, the property appraiser's presumption of correctness is lost.

If the presumption is lost, the taxpayer has the burden of proving by a preponderance of the evidence that the assessment is in excess of just value. If the presumption of correctness is retained, the taxpayer has the burden of proving by clear and convincing evidence that the assessment is in excess of just value. If the property appraiser is determined to be in error, the Value Adjustment Board (VAB) or the court can establish the assessment if there exists competent, substantial evidence in the record which cumulatively meets the requirement factors for determining just value under s. 193.011, F.S. If the record lacks the appropriate evidence, the matter is remanded by the VAB or the court with appropriate directions to the property appraiser.

Burden of Proof and Standard of Review

The obligation to prove a material fact in issue is known as the burden of proof. Generally, in a legal action the burden of proof is on the party who asserts the proposition to be established, and

² See *Blake v. Xerox Corp.*, 447 So. 2d 1348, 1351 (Fla. 1984), reviewed on the jurisdictional ground of conflict of decisions, where the Florida Supreme Court held that the issue at matter was not the method of determining market value. Rather, the only question was "whether the appraiser considered all factors mandated by the law and whether his methods and conclusions are supported by any reasonable hypothesis of a legal assessment." The Court noted that the trial court "judgment should have been affirmed [by the Third District Court of Appeal] simply on the ground that the property appraiser's determination, having been lawfully arrived at and being supported by a reasonable hypothesis of correctness, was properly upheld."

³ Section 194.011(2), F.S.

⁴ Section 194.011(3), F.S.

⁵ Section 194.036(2), F.S.

⁶ Section 194.036(1),(3), F.S.

the burden can shift between parties as the case progresses. The level or degree of proof that is required as to a particular issue is referred to as the standard of proof or standard of review. In most civil actions, the party asserting a claim or affirmative defense must prove the claim or defense by a preponderance of the evidence.⁷

Preponderance of Evidence

Preponderance of the evidence is defined as the “greater weight of evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force.”⁸

Clear and Convincing Evidence

Clear and convincing evidence is defined as “[e]vidence indicating that the thing to be proved is highly probable or reasonably certain.” It is a higher standard than preponderance of the evidence, but it is less than reasonable doubt, which is the standard in criminal proceedings.⁹

III. Effect of Proposed Changes:

This committee substitute revises the burden of proof in a challenge to an assessment by providing that, in an administrative or judicial action in which an ad valorem assessment is challenged, the burden of proof is on the party who initiates the challenge, and the standard of proof is preponderance of the evidence.

The committee substitute provides that an assessment by the property appraiser or value adjustment board is presumed to be correct, but a taxpayer who challenges an assessment is entitled to a determination by the value adjustment board or court of whether the appraisal methodology was consistent with s. 193.011, F.S., and professionally accepted appraisal practices. These provisions are intended to preempt prior case law.

The taxpayer can overcome the property appraiser’s or value adjustment board’s presumption of correctness by proving, by a preponderance of the evidence that:

- The assessed value does not represent the just value of the property after taking into account any applicable limits on annual increases in value⁷
- The assessed value does not represent classified use value or fractional value where appropriate, or
- The assessment is arbitrarily based on appraisal practices that are different from those applied to comparable property in the same county.

If the assumption of correctness is overcome, the value adjustment board or court must establish the assessment if there is enough evidence to do so. If not, the issue is remanded to the property appraiser with instructions of how to change the assessment. A challenge to the revised assessment is handled by the same procedures.

⁷ 5 Fla. Prac., Civil Practice s. 16:1 (2009 ed.).

⁸ BLACK’S LAW DICTIONARY (8th ed. 2004).

⁹ BLACK’S LAW DICTIONARY (8th ed. 2004).

The committee substitute provides that a party is not required to exclude every reasonable hypothesis of a legal assessment, and the property appraiser's assessment does not have a presumption of correctness in administrative or judicial actions where a denial of an exemption or assessment classification is challenged. The taxpayer must prove entitlement to the exemption or classification by a preponderance of the evidence.

If enacted, this committee substitute will take effect upon becoming a law and will apply to the 2009 tax roll. The provisions of the committee substitute relating to "every reasonable hypothesis" and challenges to classification or exemption status are clarifying and remedial and apply to actions pending on or after the effective date of the act.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18, Art. VII, State Constitution, provides that, except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.

Because this committee substitute does not qualify for one of the exceptions or exemptions provided in s. 18, Art. VII, State Constitution, and it is possible that taxpayers could more successfully challenge assessments, the committee substitute does fall under the mandate provisions of s. 18, Art. VII, State Constitution, and will require a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

To the extent that they are more successful in challenging assessments and denials of exemptions and use classifications, taxpayers who challenge their assessments will pay lower ad valorem taxes.

B. Private Sector Impact:

Taxpayers will have a lower burden of proof in challenging assessments and denial of exemptions and use classifications. It is likely that owners of more valuable property will

challenge their assessments, and to the extent that they are successful the burden of paying for local government services will tend to shift to owners of lower value parcels who have less incentive and fewer resources to challenge.

C. Government Sector Impact:

Local Government

The committee substitute provides that the burden of proof is placed on the property appraiser in going forward with a taxpayer challenge to an assessment. The property appraiser must prove that the assessment or the denial of an exemption or classification complies with the law and with appraisal practices. Property appraisers can respond to the additional challenges likely under this committee substitute by either using more resources (staff time and outside legal counsel) to contest the challenges, or by reducing the value of property subject to challenge without going through the administrative or judicial process.

The fiscal impact to local governments from the retroactive application of certain provisions in the committee substitute is indeterminate at this time.¹⁰

The Revenue Estimating Conference estimated the impact of a similar proposal on local government tax revenues at (\$138.9 million) in FY 2009-2010, with a recurring impact of (\$613.8 million).

State Government

In the agency committee substitute analysis, the Department of Revenue noted that the committee substitute would have an operational impact on the department's studies and in-depth reviews because s. 195.096(2)(d), F.S., provides that in "the conduct of these reviews, the department shall adhere to all standards to which the property appraisers are required to adhere." Considerable additional resources would be required for the department to comply with the Uniform Standards of Professional Appraisal Practice in conducting in-depth reviews.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 194.036(3), F.S. provides for a *de novo* proceeding in circuit court when a value adjustment board decision is appealed. This committee substitute appears to contradict that

¹⁰ See *State Farm v Laforet*, 658 So.2d 55, 61 (Fla. 1995) where the Supreme Court held that a specified section of statute could only be applied prospectively but noted that "the general rule is that substantive statute will not operate retrospectively absent clear legislative intent to the contrary, but that a procedural or remedial statute is to operate retrospectively (citing *Arrow Air, Inc. v. Walsh*, 645 So.2d 422 (Fla. 1994)). Even when the Legislature does expressly state that a statute is to have retroactive application, this Court has refused to apply a statute retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties (citing *Alamo Rent-a-Car, Inc. v Mancusi*, 632 So.2d 1352 (Fla. 1994))."

provision and existing case law¹¹ by giving value adjustment board assessments a presumption of correctness.

Line 43 of the committee substitute refers to the “fractional value of the property.” Florida does not employ fractional valuation in the assessment of property for tax purposes.

Part II of ch. 475, F.S., regulates real estate appraisers. Each appraiser registered, licensed, or certified under this part is required to comply with the Uniform Standards of Professional Appraisal Practice. (*See* s. 475.628, F.S.) However, the Attorney General has opined that, based on an exemption prescribed in s. 475.612(6), F.S., local property appraiser employees are not subject to the requirements of part II of ch. 475, F.S., even if the employee is, in fact, registered and includes his designation and number on the appraisal. The committee substitute provides that the property appraiser has the burden of proving that the assessment of a parcel was arrived at, in part, by using professional accepted appraisal standards. In this respect, the committee substitute appears to subject the property appraisers to the provisions of the Uniform Standards of Professional Appraisal Practice in part II of ch. 475, F.S., even if they are not certified, licensed, or registered under that part.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on April 15, 2009:

The committee substitute provides that an assessment by the property appraiser or the VAB is presumed correct, but a taxpayer who challenges an assessment is entitled to a determination by the VAB or court of whether the assessment was determined using a methodology consistent with s. 193.011, F.S., and professionally accepted appraisal standards. These provisions are intended to preempt prior case law.

The taxpayer can overcome the property appraiser’s or value adjustment board’s presumption of correctness by proving, by a preponderance of the evidence that:

- The assessed value does not represent the just value of the property after taking into account any applicable limits on annual increases in value’
- The assessed value does not represent classified use value or fractional value where appropriate, or
- The assessment is arbitrarily based on appraisal practices that are different from those applied to comparable property in the same county.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹¹ *RH Resorts Ltd. v. Donegan*, 881 So.2d 1152 (Fla. 5th DCA 2004)